

Fall 2009

I

Nature of month-to-month k's

SoF

Rent increase –

Effective notice –

g.f. –

duty to communicate

duty to notice

trade usage/course of performance

under existing k

acceptance by silence

if not, no arrearage

even If effective, waiver – knowing?

reliance?

Month of May increase

30 day termination = 30 day increase?

Waiver of duty

Attempted modification

Effective 30 days after 9/2

Misrep

-material

Eviction

Only in arrears by max \$800 (May) if pay \$1000

Can stay until October 1

Interp: \$1000 or one month's rent

Late fee

Interpretation (month's rent or all rent owed)

Waiver

reliance

Retraction

Penalty clause

New offer – client wishes to reject and can

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II

COL

Mixed – patches/website

Art II for goods/ redesign – restatement or UCC by analogy

9/1 Parties recognize existence of k

Rest approach

2-207 -

All subsequent - memorializations

10/28 offer? Test

11/1 rejection of offer?

11/15 new offer?

Acceptance – failure to reject?

fitness – conspicuous?

12/15 new offer?

Acceptance – failure to reject

Time is of essence/liquidated damages

Merger clause

Modification – g.f. ?

UCC 2-207(3)

Patch appliqué – warranty of fitness

RST 33 – list of features/technical decisions

Extrinsic evidence irrelevant unless 12/15 is k

To interpret “all work”?

Misrep?

“works with customers to provide fully-integrated...” – promise/warranty/puffery

trade usage/course of performance/experts

G.F - Duty to cooperate

Consideration for 8k/

duress

Duty to mitigate

Penalty clause

Non-conforming goods - cure

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III

Breach of DD

Accord and Satisfaction/Modification

Circumstances not anticipated

Fair and equitable

Right to return of \$25K

Fault irrelevant

SC admits can't perform

Breach material

Defense to breach –changed circumstances

Promise to try to bring

Expenditures reasonable?

“get an audience”

Damages

Foreseeable

Allocated to breach, not 1st k

Irritation irrelevant